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CONFIDENTIAL

<p>JUL 09 2008</p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> <p>State Bar Court of California Hearing Department Los Angeles PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE OR MENTAL HEALTH ISSUES</p>		
<p>Counsel For The State Bar</p> <p>MONIQUE T. MILLER DEPUTY TRIAL COUNSEL 1149 South Hill Street Los Angeles, California 90015-2299 213-765-1486</p> <p>Bar # 212469</p>	<p>Case Number (s)</p> <p>06-O-10022 07-O-10422</p>	<p>(for Court's use)</p> <p>FILED NOV 04 2008 STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>In Pro Per Respondent</p> <p>EDWIN TOLMAS 523 W 6th St #625 Los Angeles, CA, 90014 213-624-4001</p> <p>Bar # 35726</p>	<p>Submitted to:</p> <p>STIPULATION RE FACTS AND CONCLUSIONS OF LAW</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter Of:</p> <p>EDWIN TOLMAS</p> <p>Bar # 35726</p> <p>A Member of the State Bar of California (Respondent)</p>		

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **June 9, 1964**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, if Respondent is not accepted into the Lawyer Assistance Program, this stipulation will be rejected and will not be binding on the Respondent or the State Bar.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated, except for Probation Revocation proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **10** pages, excluding the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".



- (6) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) ☐ **Prior record of discipline** [see standard 1.2(f)]
- (a) ☐ State Bar Court case # of prior case
- (b) ☐ Date prior discipline effective
- (c) ☐ Rules of Professional Conduct/ State Bar Act violations:
- (d) ☐ Degree of prior discipline
- (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below:
- (2) ☐ **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) ☐ **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) ☐ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) ☐ **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) ☐ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) ☒ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☐ **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) ☒ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) ☐ **Restitution:** Respondent paid \$ on in restitution to without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) ☐ **Good Faith:** Respondent acted in good faith.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) ☐ **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

Additional mitigating circumstances:

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: EDWIN TOLMAS, Bar #35726

CASE NUMBER(S): 06-O-10022; 07-O-10422

WAIVER OF VARIANCE BETWEEN NOTICE OF DISCIPLINARY CHARGES AND STIPULATED FACTS AND CULPABILITY

Respondent Edwin Tolmas ("Respondent") and the State Bar hereby waive any variance in the facts and conclusions of law as set forth in the Notices of Disciplinary Charges ("NDCs") filed on April 21, 2008, and May 6, 2008, and the facts and conclusions of law contained in this stipulation.

Additionally, the parties waive the issuance of an amended Notice of Disciplinary charges relating to the cases which are the subject matter of this stipulation.

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

Case No. 06-O-10022

FACTS

1. On June 8, 2004, Qu C. Jung ("Jung") employed Respondent to pursue a breach of contract action against Sayad Amerian ("Amerian") (the "contract matter"). Pursuant to the retainer agreement, Jung agreed to pay Respondent \$5,000 in attorney's fees and costs. On June 8, 2004, Jung made an initial payment of \$1,000 toward the \$5,000 retainer amount.

2. As of November 2004, Respondent had failed to pursue the contract matter. Respondent did not perform any services of value on behalf of Jung in the contract matter. As a result, on November 29, 2004, Jung hired the law firm of Dill and Showler to pursue an action against Amerian.

3. On January 14, 2005, James Knox ("Knox"), an attorney with Dill and Showler, wrote Respondent advising him that Dill and Showler had been retained to represent Jung in the contract matter. In the January 14, 2005 letter, Knox asked Respondent to provide an accounting

and a refund of all unearned fees to Jung. Respondent received Knox's letter but did not provide an accounting, a refund or otherwise directly respond to the January 14, 2005 letter.

4. On January 27, 2005, Respondent filed a civil action on behalf of Jung entitled, Qu C. Jung v. Sayad Amerian San Bernardino Superior Court, case no. SCVSS122969 (the "breach of contract action"). Respondent did not tell Jung that he had filed the complaint on Jung's behalf.

5. At the time the complaint was filed in the breach of contract action, the court set a Case Management Conference for March 15, 2005.

6. As of March 15, 2005, Respondent had not filed a proof of service in the breach of contract action and the defendant's answer had not been filed. Therefore, on March 15, 2005, the court, on its own motion, rescheduled the Case Management Conference ("CMC") for August 9, 2005. The court instructed Respondent to notify the defendant. The court properly served Respondent with notice of the continuance. Respondent received the court's March 15, 2005 notice.

7. As of April 22, 2005, Respondent had not filed a proof of service in the breach of contract action, so the court held an Order to Show Cause ("OSC") regarding the failure to complete service of the complaint in the breach of contract action. Respondent did not appear.

8. On April 22, 2005, the court scheduled an OSC for May 23, 2005 regarding dismissal for failure to prosecute the breach of contract action. On April 22, 2005, the court properly served Respondent with notice of the May 23, 2005 OSC regarding dismissal. Respondent received the court's April 22, 2005 notice.

9. On or about May 18, 2005, Knox wrote Respondent enclosing a substitution of attorney for the breach of contract action. In his May 18, 2005 letter, Knox asked Respondent to execute the substitution of attorney and forward the client file as soon as possible since there was an OSC regarding dismissal set for May 23, 2005 in the breach of contract action. On May 18, 2005, Knox mailed the letter to the Respondent's State Bar Membership address. Respondent received the May 18, 2005 letter but did not execute the substitution of attorney or otherwise respond to Knox's letter.

10. On or about May 23, 2005, the court held the OSC regarding dismissal in the breach of contract action. Respondent did not appear at the May 23, 2005 OSC. Knox did appear on behalf of Jung and represented to the court that he was substituting into the case and was attempting to obtain the file from Respondent. The court continued the OSC regarding dismissal to June 22, 2005 in order to give Knox the opportunity to locate Respondent.

11. On May 27, 2005, Knox talked to Respondent about the breach of contract action. During the May 27, 2005 telephone conversation, Respondent told Knox he would sign the substitution of attorney and turn over the file by May 31, 2005.

12. As of June 2, 2005, Respondent had not turned over the file and had not executed the substitution of attorney. Therefore, on June 2, 2005, Knox sent Respondent a letter, reminding Respondent of their May 27, 2005 telephone conversation regarding the file and the substitution of attorney. Respondent received the letter but failed to turn over the file. However, Respondent did execute and send the substitution of attorney.

13. As of June 15, 2005, Respondent still had not turned over the file. Therefore, on June 15, 2005, Knox wrote Respondent again and reminded him of Knox's attempts to contact Respondent regarding the breach of contract action. In the June 15, 2005 letter, Knox asked Respondent to turn over the file by June 17, 2005. Respondent received the letter but failed to turn over the file.

14. On June 16, 2005, Knox filed the substitution of attorney with the court substituting in Dill and Showler as the counsel of record for Jung in the breach of contract action.

15. On June 22, 2005, the court held an OSC regarding dismissal for failure to prosecute in the breach of contract action. On June 22, 2005, Knox appeared on behalf of Jung, and the court continued the OSC to August 9, 2005.

16. On August 9, 2005, the court held a CMC in the breach of contract action. Knox appeared on behalf of Jung and notified the court that Respondent still had not turned over the file, and the defendant had not been served. Knox informed the court he would request publication in order to serve the defendant. The OSC regarding dismissal was taken off calendar. The court continued the CMC to September 23, 2005.

17. On September 23, 2005, the court held a CMC in the breach of contract action. Knox appeared on behalf of Jung and notified the court that Respondent still had not turned over the court file. The court continued the CMC in the breach of contract action to November 7, 2005. Following the September 23, 2005 CMC, Respondent turned over the file to Knox.

18. On November 7, 2005, the court held a CMC in the breach of contract action. During the November 7, 2005 CMC, Knox informed the court that they had located a new address for the defendant.

19. On January 3, 2006, attorney Scott Showler of Dill and Showler wrote Jung regarding the breach of contract action. In his January 3, 2006 letter, Showler informed Jung

that Respondent had made an error in the complaint filed on January 27, 2005. Specifically, Respondent incorrectly stated that the amount of damages sought in the prayer for judgment was \$6,500 rather than correct amount of \$65,000. In the letter, Showler told Jung that they either had to amend the complaint or dismiss the complaint and then refile when Jung was interested in doing so. Showler told Jung that since Jung had been unwilling to communicate with his office and had not paid the law firm, they were unwilling to amend and reserve the complaint. Showler also informed Jung that he was enclosing a copy of a request for dismissal without prejudice of the breach of contract action. Showler told Jung that he would hold the dismissal for one week before sending it in for filing with the hope that Showler would hear from Jung within that time.

20. On January 10, 2006, Showler filed a Request for Dismissal in the breach of contract action asking the court to dismiss the action without prejudice. On January 10, 2006, the court dismissed the breach of contract action without prejudice.

CONCLUSIONS OF LAW

21. By failing to provide any legal services of value in the contract matter between June 8, 2004 and January 2005, by failing to state the correct amount of damages in the complaint filed in the breach of contract action, by failing to serve the defendant in the breach of contract action, by failing to timely execute a substitution of attorney and by failing to appear at the May 23, 2005 OSC regarding dismissal, Respondent intentionally, recklessly or repeatedly failed to perform legal services with competence in wilful violation of Rules of Professional Conduct, rule 3-110(A).

22. By failing to inform Jung that he had filed a complaint against Amerian in the contract matter, Respondent failed to inform Jung of a significant development in a matter in which Respondent had agreed to provide legal services in wilful violation of Business and Professions Code section 6068(m).

23. By failing to refund any unearned fees to Jung or to his counsel, as requested by Jung's counsel, Respondent failed to refund unearned monies in wilful violation of Rules of Professional Conduct, rule 3-700(D)(2).

24. By not promptly returning the client file to Jung or his counsel as requested and by not promptly returning the client file even after executing the substitution of attorney in the breach of contract action, Respondent failed to release promptly, upon termination of employment, to his clients, at the request of the clients, all client papers and property in wilful violation of Rules of Professional Conduct, rule 3-700(D)(1).

FACTS

25. In August 12, 2006, Anat Kedem (Kedem) hired Respondent to represent her in a traffic matter (speeding ticket). Kedem paid Respondent \$1,750 as an advance fee for his legal services.

26. On August 17, 2006, Respondent and Kedem appeared in court. Respondent sought and obtained a continuance of Kedem's traffic matter. The court continued Kedem's matter until September 18, 2006.

27. On September 18, 2006, Respondent failed to appear at Kedem's hearing. Kedem appeared but was not allowed to proceed without her attorney. The court issued a bench warrant.

28. On September 18, 2006, Kedem called Respondent and told him what happened in court.

29. On September 19, 2006, Respondent appeared in court with Kedem. The court ordered them to appear in court on October 24, 2006.

30. On October 24, 2006, Respondent again failed to appear at Kedem's hearing. Kedem was in court and waited for Respondent.

31. On October 24, 2006, Kedem called Respondent and told him what happened in court. Respondent told her that he would work everything out. Thereafter, Respondent obtained another court date for Kedem, October 31, 2006.

32. On October 25, 2006, the court issued a bench warrant for Kedem and set bail in the amount of \$5,035.

33. On October 31, 2006, Respondent appeared in court with Kedem for her traffic matter. The court admonished Respondent and Kedem for their multiple failures to appear.

34. At the hearing on October 31, 2006, Respondent was successful in getting the court to allow Kedem to attend traffic school.

CONCLUSIONS OF LAW

35. By failing to appear in court on two separate occasions, Respondent wilfully failed to perform legal services with competence in wilful violation of Rules of Professional Conduct, rule 3-110(A).

RESTITUTION

<u>To</u>	<u>Amount</u>	<u>Plus 10% interest as of</u>
Qu C. Jung	\$1,000	January 14, 2005

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was June 26, 2008.

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In the Matter of EDWIN TOLMAS, BAR NO. 35726	Case number(s): 06-O-10022, 07-O-10422
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SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts and Conclusions of Law.

Respondent enters into this stipulation as a condition of his/her participation in the Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Program Contract.

If the Respondent is not accepted into the Program or does not sign the Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

If the Respondent is accepted into the Program, upon Respondent's successful completion of or termination from the Program, this Stipulation will be filed and the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Statement Re: Discipline shall be imposed or recommended to the Supreme Court.

July 8, 2008
Date

Edwin Tolmas
Respondent's Signature *(pro per)*

Edwin Tolmas
Print Name

July 9, 2008
Date

Monique T. Miller
Respondent's Counsel Signature
Deputy Trial Counsel's Signature

Monique T. Miller
Print Name

(Do not write above this line.)

In the Matter Of EDWIN TOLMAS, BAR NO. 35726	Case Number(s): 06-O-10022, 07-O-10422
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ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public,
IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without
prejudice, and:

- ☒ The stipulation as to facts and conclusions of law is APPROVED.
- ☐ The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.
- ☐ All court dates in the Hearing Department are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 135(b) and 802(b), Rules of Procedure.)

October 30, 2008

Date

Judge of the State Bar Court

DONALD F. MILES

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on November 4, 2008, I deposited a true copy of the following document(s):

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

in a sealed envelope for collection and mailing on that date as follows:

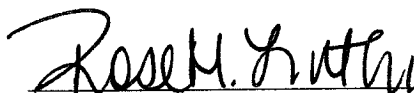
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

EDWIN TOLMAS, ESQ.
523 W 6TH ST #625
LOS ANGELES, CA 90014

- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

MONIQUE MILLER, ESQ., Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on November 4, 2008.



Rose Luthi
Case Administrator
State Bar Court

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on April 21, 2010, I deposited a true copy of the following document(s):

DECISION AND ORDER SEALING DOCUMENTS AND FILING STIPULATION

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

in a sealed envelope for collection and mailing on that date as follows:

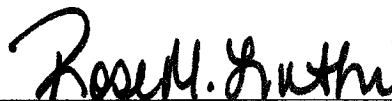
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

EDWIN TOLMAS, ESQ.
523 W 6TH ST #625
LOS ANGELES, CA 90014

- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

MONIQUE MILLER, ESQ., Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 21, 2010.



Rose Luthi
Case Administrator
State Bar Court

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on April 22, 2010, I deposited a true copy of the following document(s):

DECISION AND ORDER SEALING DOCUMENTS AND FILING STIPULATION

STIPULATION RE FACTS AND CONCLUSIONS OF LAW FILED APRIL 21, 2010;

STIPULATION RE FACTS AND CONCLUSIONS OF LAW FILED NOVEMBER 4, 2008

in a sealed envelope for collection and mailing on that date as follows:

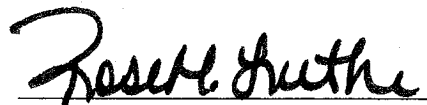
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

EDWIN TOLMAS, ESQ.
523 W 6TH ST #625
LOS ANGELES, CA 90014

- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

MONIQUE MILLER, ESQ., Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 22, 2010.



Rose Luthi
Case Administrator
State Bar Court